

1 SCOTT B. LIEBERMAN, Cal. Bar No. 208764

slieberman@ftrlfirm.com

2 KAYLA Y. WALES, Cal. Bar No. 340725

kwales@ftrlfirm.com

3 **FINLAYSON TOFFER**
4 **ROOSEVELT & LILLY LLP**

15615 Alton Parkway, Suite 270

Irvine, California 92618

5 Telephone: 949-759-3810

6 Facsimile: 949-759-3812

7 Attorneys for Plaintiffs

OCG ENERGY, LLC and

8 OCG CREDIT, LLC

9
10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA

12 OCG ENERGY, LLC, a California
13 limited liability company; and OCG
14 CREDIT, LLC, a California limited
liability company,

15 Plaintiffs,

16 v.

17 JARVAN SHEN, an individual; and
DOES 1 - 100, inclusive,

18 Defendants.

Case No. 8:22-cv-01568-FWS-DFM

Honorable Douglas F. McCormick

**STIPULATED PROTECTIVE
ORDER**

1 federal statutes, court rules, case decisions, or common law. Accordingly, to
2 expedite the flow of information, to facilitate the prompt resolution of disputes over
3 confidentiality of discovery materials, to adequately protect information the parties
4 are entitled to keep confidential, to ensure that the parties are permitted reasonable
5 necessary uses of such material in preparation for and in the conduct of trial, to
6 address their handling at the end of the litigation, and serve the ends of justice, a
7 protective order for such information is justified in this matter. It is the intent of the
8 parties that information will not be designated as confidential for tactical reasons
9 and that nothing be so designated without a good faith belief that it has been
10 maintained in a confidential, non-public manner, and there is good cause why it
11 should not be part of the public record of this case.

12 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

13 The parties further acknowledge, as set forth in Section 14.3, below, that this
14 Stipulated Protective Order does not entitle them to file confidential information
15 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
16 and the standards that will be applied when a party seeks permission from the court
17 to file material under seal. There is a strong presumption that the public has a right
18 of access to judicial proceedings and records in civil cases. In connection with non-
19 dispositive motions, good cause must be shown to support a filing under seal. *See*
20 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006),
21 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-1211 (9th Cir. 2002), *Makar-*
22 *Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
23 stipulated protective orders require good cause showing), and a specific showing of
24 good cause or compelling reasons with proper evidentiary support and legal
25 justification, must be made with respect to Protected Material that a party seeks to
26 file under seal. The parties' mere designation of Disclosure or Discovery Material
27 as CONFIDENTIAL does not—without the submission of competent evidence by
28

1 declaration, establishing that the material sought to be filed under seal qualifies as
2 confidential, privileged, or otherwise protectable—constitute good cause.

3 Further, if a party requests sealing related to a dispositive motion or trial, then
4 compelling reasons, not only good cause, for the sealing must be shown, and the
5 relief sought shall be narrowly tailored to serve the specific interest to be protected.
6 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-679 (9th Cir. 2010). For
7 each item or type of information, document, or thing sought to be filed or introduced
8 under seal, the party seeking protection must articulate compelling reasons,
9 supported by specific facts and legal justification, for the requested sealing order.
10 Again, competent evidence supporting the application to file documents under seal
11 must be provided by declaration. Any document that is not confidential, privileged,
12 or otherwise protectable in its entirety will not be filed under seal if the confidential
13 portions can be redacted. If documents can be redacted, then a redacted version for
14 public viewing, omitting only the confidential, privileged, or otherwise protectable
15 portions of the document, shall be filed. Any application that seeks to file
16 documents under seal in their entirety should include an explanation of why
17 redaction is not feasible.

18 4. DEFINITIONS

19 4.1 Action: this pending federal lawsuit.

20 4.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 4.3 "CONFIDENTIAL" Information or Items: information
23 (regardless of how it is generated, stored or maintained) or tangible things that
24 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
25 above in the Good Cause Statement.

26 4.4 Counsel: Outside Counsel of Record and House Counsel (as well
27 as their support staff).
28

1 4.5 Designating Party: a Party or Non-Party that designates
2 information or items that it produces in disclosures or in responses to discovery as
3 "CONFIDENTIAL."

4 4.6 Disclosure or Discovery Material: all items or information,
5 regardless of the medium or manner in which it is generated, stored, or maintained
6 (including, among other things, testimony, transcripts, and tangible things), that are
7 produced or generated in disclosures or responses to discovery.

8 4.7 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this Action.

11 4.8 House Counsel: attorneys who are employees of a party to this
12 Action. House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 4.9 Non-Party: any natural person, partnership, corporation,
15 association or other legal entity not named as a Party to this Action.

16 4.10 Outside Counsel of Record: attorneys who are not employees of
17 a party to this Action but are retained to represent a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm that
19 has appeared on behalf of that party, and includes support staff.

20 4.11 Party: any party to this Action, including all of its officers,
21 directors, employees, consultants, retained experts, and Outside Counsel of Record
22 (and their support staffs).

23 4.12 Producing Party: a Party or Non-Party that produces Disclosure
24 or Discovery Material in this Action.

25 4.13 Professional Vendors: persons or entities that provide litigation
26 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
27
28

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 4.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as "CONFIDENTIAL."

5 4.15 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 5. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the
14 trial judge and other applicable authorities. This Order does not govern the use of
15 Protected Material at trial.

16 6. DURATION

17 Once a case proceeds to trial, information that was designated as
18 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
19 as an exhibit at trial becomes public and will be presumptively available to all
20 members of the public, including the press, unless compelling reasons supported by
21 specific factual findings to proceed otherwise are made to the trial judge in advance
22 of the trial. *See Kamakana*, 447 F.3d at 1180-1181 (distinguishing "good cause"
23 showing for sealing documents produced in discovery from "compelling reasons"
24 standard when merits-related documents are part of court record). Accordingly, the
25 terms of this protective order do not extend beyond the commencement of the trial.
26
27
28

1 7. DESIGNATING PROTECTED MATERIAL

2 7.1 Exercise of Restraint and Care in Designating Material for
3 Protection. Each Party or Non-Party that designates information or items for
4 protection under this Order must take care to limit any such designation to specific
5 material that qualifies under the appropriate standards. The Designating Party must
6 designate for protection only those parts of material, documents, items or oral or
7 written communications that qualify so that other portions of the material,
8 documents, items or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 7.2 Manner and Timing of Designations. Except as otherwise
19 provided in this Order, or as otherwise stipulated or ordered, Disclosure of
20 Discovery Material that qualifies for protection under this Order must be clearly so
21 designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (*e.g.*, paper or electronic
24 documents, but excluding transcripts of depositions or other pretrial or trial
25 proceedings), that the Producing Party affix at a minimum, the legend
26 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") to each page that
27 contains protected material. If only a portion of the material on a page qualifies for
28

1 protection, the Producing Party also must clearly identify the protected portion(s)
2 (*e.g.*, by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which documents it would like copied and produced. During the
6 inspection and before the designation, all of the material made available for
7 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
8 identified the documents it wants copied and produced, the Producing Party must
9 determine which documents, or portions thereof, qualify for protection under this
10 Order. Then, before producing the specified documents, the Producing Party must
11 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
12 If only a portion of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
14 markings in the margins).

15 (b) for testimony given in depositions that the Designating Party
16 identifies the Disclosure or Discovery Material on the record, before the close of the
17 deposition all protected testimony; but a Designating Party may designate portions
18 of depositions as containing Protected Material after transcription of the
19 proceedings; a party will have until twenty-one (21) days after receipt of the final
20 deposition transcript to inform the other party or parties to the action of the portions
21 of the transcript to be designated "CONFIDENTIAL." Further, the Producing party
22 or third party will have the right to exclude from attendance at the deposition, during
23 such time as the Protected Information is to be disclosed, any person other than the
24 deponent, counsel (including their staff and associates), the court reporter, and
25 person(s) agreed upon pursuant to this Protective Order.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28

1 the exterior of the container or containers in which the information is stored the
2 "CONFIDENTIAL" legend. If only a portion or portions of the information
3 warrants protection, the Producing Party, to the extent practicable, shall identify the
4 protected portion(s).

5 7.3 Inadvertent Failures to Designate. If timely corrected, an
6 inadvertent failure to designate qualified information or items does not, standing
7 alone, waive the Designating Party's right to secure protection under this Order for
8 such material. Upon timely correction of a designation, the Receiving Party must
9 make reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court's
14 Scheduling Order.

15 8.2 Meet and Confer. The Challenging Party shall initiate the
16 dispute resolution process under Local Rule 37-1 *et seq.*

17 8.3 Joint Stipulation. Any challenge submitted to the Court shall be
18 via a joint stipulation pursuant to Local Rule 37-2.

19 8.4 Burden of Persuasion. The burden of persuasion in any such
20 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
21 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
22 and burdens on other parties) may expose the Challenging Party to sanctions.
23 Unless the Designating Party has waived or withdrawn the confidentiality
24 designation, all parties shall continue to afford the material in question the level of
25 protection to which it is entitled under the Producing Party's designation until the
26 Court rules on the challenge.

1 9. ACCESS TO AND USE OF PROTECTED MATERIAL

2 9.1 Basic Principles. A Receiving Party may use Protected Material
3 that is disclosed or produced by another Party or by a Non-Party in connection with
4 this Action only for prosecuting, defending or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 15 below (FINAL
8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 (c) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters and their staff;
26
27
28

1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (g) the author or recipient of a document containing the information or
5 a custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in
7 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
8 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
9 they will not be permitted to keep any confidential information unless they sign the
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may
13 be separately bound by the court reporter and may not be disclosed to anyone except
14 as permitted under this Stipulated Protective Order; and

15 (i) any mediators or settlement officers and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
18 PRODUCED IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 "CONFIDENTIAL" that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena
26 or order is subject to this Protective Order. Such notification shall include a copy of
27 this Stipulated Protective Order; and
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected. If the
3 Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action
5 as "CONFIDENTIAL" before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party's
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this Action
10 to disobey a lawful directive from another court.

11 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
14 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
15 produced by Non-Parties in connection with this litigation is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party's protected information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party's
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party
23 that some or all of the information requested is subject to a confidentiality
24 agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and
28

1 (3) make the information requested available for inspection by the Non-
2 Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this Court within
4 14 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery
6 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
7 not produce any information in its possession or control that is subject to the
8 confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this Court of its Protected Material.

11 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this
14 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
15 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
16 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the "Acknowledgment and
19 Agreement to Be Bound" attached hereto as Exhibit A.

20 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
21 OTHERWISE PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection,
24 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
26 procedure may be established in an e-discovery order that provides for production
27 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
28 (e), insofar as the parties reach an agreement on the effect of disclosure of a

1 communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 14. MISCELLANEOUS

5 14.1 Right to Further Relief. Nothing in this Order abridges the right
6 of any person to seek its modification by the Court in the future.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of
8 this Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in this
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any
11 ground to use in evidence of any of the material covered by this Protective Order.

12 14.3 Filing Protected Material. A Party that seeks to file under seal
13 any Protected Material must comply with Local Civil Rule 79-5. Protected Material
14 may only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material. If a Party's request to file Protected Material under seal
16 is denied by the court, then the Receiving Party may file the information in the
17 public record unless otherwise instructed by the court.

18 15. FINAL DISPOSITION

19 After the final disposition of this Action, as defined in Section 6, within 60
20 days of a written request by the Designating Party, each Receiving Party must return
21 all Protected Material to the Producing Party or destroy such material. As used in
22 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected
24 Material. Whether the Protected Material is returned or destroyed, the Receiving
25 Party must submit a written certification to the Producing Party (and, if not the same
26 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
27 (by category, where appropriate) all the Protected Material that was returned or
28

1 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 2 abstracts, compilations, summaries or any other format reproducing or capturing any
 3 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 4 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 5 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 6 reports, attorney work product, and consultant and expert work product, even if such
 7 materials contain Protected Material. Any such archival copies that contain or
 8 constitute Protected Material remain subject to this Protective Order as set forth in
 9 Section 6 (DURATION).

10 16. VIOLATION

11 Any violation of this Order may be punished by appropriate measures
 12 including, without limitation, contempt proceedings and/or monetary sanctions.

13
 14 **IT IS SO STIPULATED.**

15
 16 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the undersigned counsel for Plaintiffs
 17 certifies that the content of this document is acceptable to counsel for Defendant,
 18 and that Defendant's counsel has provided his authorization to affix his electronic
 19 signature to this document.

20 DATED: March 29, 2023

21
 22 FINLAYSON TOFFER ROOSEVELT & LILLY LLP

23
 24 By /s/ Scott B. Lieberman

25 Scott B. Lieberman

26 Kayla Y. Wales

27 Attorneys for Plaintiffs
 28 OCG ENERGY, LLC and OCG CREDIT, LLC

1 DATED: March 29, 2023

2 ROPERS MAJESKI PC

3
4 By /s/ Benjamin M. Wigley

5 Alan J. Hart

6 Benjamin M. Wigley

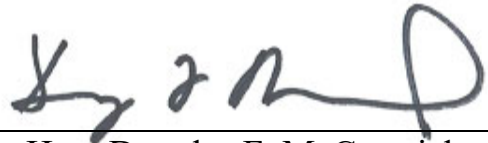
7 Attorneys for Defendant

8 JARVAN SHEN

9 **ORDER**

10 In consideration of the Parties' stipulation, and for good cause appearing, IT
11 IS HEREBY ORDERED that the Stipulated Protective Order is **GRANTED**.

12
13 DATED: April 3, 2023

14
15 

16 Hon. Douglas F. McCormick
17 United States Magistrate Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OCG ENERGY, LLC, a California
limited liability company; and OCG
CREDIT, LLC, a California limited
liability company,

Plaintiffs,

v.

JARVAN SHEN, an individual; and
DOES 1 - 100, inclusive,

Defendants.

Case No. 8:22-cv-01568-FWS-DFM
Honorable Douglas F. McCormick

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____ by

2. I have read the Protective Order entered on

_____, Case No. 8:22-cv-01568-FWS-DFM (C.D. Cal.),
and have received a copy of the Protective Order.

3. I promise that I will treat and use any and all "CONFIDENTIAL"
information, as defined in the Protective Order, given to me only in a manner
authorized by the Protective Order, and only to assist counsel in the litigation of this
matter.

1 4. I promise that I will not disclose or discuss such "CONFIDENTIAL"
2 information with anyone other than the persons described in paragraphs 9 and 10 of
3 the Protective Order.

4 5. I acknowledge that, by signing this agreement, I am subjecting myself
5 to the jurisdiction of the United States District Court for the Central District of
6 California with respect to enforcement of the Protective Order.

7 6. I understand that any disclosure or use of "CONFIDENTIAL"
8 information in any manner contrary to the provisions of the Protective Order may
9 subject me to sanctions for contempt of court.

10
11 I declare under penalty of perjury that the foregoing is correct.

12
13 Dated: _____

14 _____
15
16
17
18
19
20
21
22
23
24
25
26
27
28